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TAXATION — PURPOSES FOR WHICH TAXES MAY BE LEVIED — GRATUITIES TO WAR VETERANS. — A Wisconsin statute provided for a special tax in order to pay a bonus of ten dollars for each month of service to all soldiers and sailors who had taken part in the war (1919 WISCONSIN LAWS, c. 667). *Held*, that the statute is constitutional. *State v. Johnson*, 175 N. W. 589 (Wis.).

For a discussion of the principles involved in this case, see NOTES, p. 846, *supra*.

TORTS — LIABILITY OF OCCUPIER OF PREMISES — LESSEE LIABLE FOR INJURIES TO INVITEE ON PORTION OF PREMISES NOT COVERED BY LEASE. — A municipal ordinance required barber shops to maintain lavatories for the use of customers. The only lavatory provided by the defendant barber was located in the cellar of the building, a part of the premises not covered by his lease. His customers frequently used this lavatory, the passageway to which was dark and dangerous, as the defendant knew. The plaintiff, a customer, was injured while going along this passageway. *Held*, that the defendant is liable. *McCallum v. Hemphill Trade Schools, Ltd.*, [1920] 1 W. W. R. 114 (Alberta).

The duty of an occupier of premises towards an invitee is to use ordinary care and prudence to have those premises reasonably safe. *Indermaur v. Dames*, L. R. 2 C. P. 311; *Pauckner v. Walkem*, 231 Ill. 276, 83 N. E. 202. A patron of a shopkeeper is normally an invitee. See *Schnatterer v. Bamberger*, 81 N. J. L. 558, 79 Atl. 324. But the customer is not an invitee on every part of the premises. *Menteer v. Scalzo Fruit Co.*, 240 Mo. 177, 144 S. W. 833; *Herzog v. Hemphill*, 7 Cal. App. 116, 93 Pac. 899. In the absence of the ordinance, there would be some difficulty in the principal case in determining whether the customer was an invitee or licensee on that portion of the premises where the injury occurred. He would probably have been a licensee. *Herzog v. Hemphill*, *supra*. An owner's constantly permitting people to use a portion of premises not devoted to business purposes is indicative of a license rather than of an invitation. *Rooney v. Woolworth*, 74 Conn. 720, 52 Atl. 411. But the ordinance requiring the furnishing of a lavatory would clearly make the customer an invitee, if the defendant could be said to be the occupier of the premises in which the lavatory was situated. And there would seem to be no objection to considering one who has a license to use premises an occupier for a particular purpose. But even assuming that the defendant cannot be held as an occupier of premises, the decision seems correct, because the ordinance imposes affirmative duties which may serve as the basis of liability. See *Willy v. Mulledy*, 78 N. Y. 310. Whether it is said that the defendant has omitted to comply with the ordinance or that in complying he has been negligent, he should be liable for proximately resulting injuries.

WAR — SUIT BY ALIEN ENEMY — EFFECT OF PAYMENT OF JUDGMENT TO ALIEN PROPERTY CUSTODIAN. — The plaintiff, a citizen of Germany resident at Bremen, sued the defendant, a United States corporation, in the District Court and recovered judgment. Then war broke out between the United States and Germany and the defendant appealed. The Circuit Court affirmed the judgment but directed that it be paid to the clerk of court, to be handed by him to the alien property custodian. *Held*, on *certiorari*, that the judgment of the Circuit Court be affirmed. *The Birge-Forbes Co. v. Heye*, U. S. Sup. Ct. No. 76, October Term, 1919.

The general rule is that an alien enemy resident abroad cannot sue as plaintiff in the courts of the home country. *Speidel v. Barstow Co.*, 243 Fed. 621; *Hutchinson v. Brock*, 11 Mass. 119. The reason for the rule is that a judgment for an alien enemy increases the resources of the enemy country

while diminishing those of the home country. England applies the doctrine to appeals by a plaintiff who has become an alien enemy since judgment. *Porter v. Freudenberg*, [1915] 1 K. B. 857. But where the judgment directs payment to the alien property custodian, our resources will not go to Germany and there seems no valid reason for refusing to settle the rights of the parties. See *Rothbar v. Herzfeld*, 179 App. Div. 865, 869, 167 N. Y. Supp. 199, 202. Even in the absence of an alien property custodian, it has been held that a plaintiff who has become an alien enemy since judgment can appeal. See *Taylor v. Albion Lumber Co.*, 176 Cal. 347, 352, 168 P. 348, 350. At any rate, the result of the principal case is a necessary one, because it is a loyal defendant who is seeking relief in the Appellate Court. *Owens v. Hanney*, 9 Cranch (U. S.), 180.

WATERS — NAVIGABILITY — NECESSITY OF ACTUAL USER. — By the act of 1890 Congress prohibited the building of any dams across navigable waters of the United States without authority of the Secretary of War. (26 STAT. AT L. 454.) The defendant company constructed a dam across the Desplaines River in Illinois without obtaining such authority. The United States filed a bill of complaint seeking its removal and an injunction against further action. The evidence showed that the river had been used by fur traders with canoes and flatboats as late as 1830. Since then, however, due to natural obstacles to navigation and the construction of a canal near-by, it had not been used for commerce. *Held*, that the relief be granted. *Economy Light & Power Co. v. United States*, 256 Fed. 792 (Circ. Ct. App.).

Navigable waters of the United States are those which form, by themselves, or by their connections with other waters, a continuous channel for commerce with foreign countries or among the states. *The Daniel Ball*, 10 Wall. 557; *Miller v. Mayor of New York*, 109 U. S. 385. Navigability does not depend on the character of the craft, however propelled, or the nature of the commerce. *The Montello*, 20 Wall. (U. S.) 430; *Heyward v. Farmers' Mining Co.*, 42 S. C. 139, 19 S. E. 963. It is not necessary to prove long and continuous user nor adaptability for commercial use during all the seasons of the year. *Moore v. Sanborn*, 2 Mich. 519; *Lewis v. Coffey County*, 77 Ala. 190. Cf. *State v. Gilmanston*, 14 N. H. 467, 480. A stream is not rendered non-navigable because of temporary obstructions or because of difficulties caused by natural barriers such as rapids and sand bars. *The Montello, supra*; *Atty. Genl. v. Harrison*, 12 Grant, Ch. 466. But a stream not naturally navigable cannot be made so by artificial means so as to deprive riparian owners of their vested property rights. *Yates v. Milwaukee*, 10 Wall. 497; *Murray v. Preston*, 106 Ky. 561, 50 S. W. 1095. A navigation which is temporary, precarious, and unprofitable is insufficient. *Harrison v. Fite*, 148 Fed. 781; *North American Co. v. Mintzer*, 245 Fed. 297. The true criterion is one of sound business common sense, — natural useful capacity as a public highway of transportation. *Little Rock, etc. R. R. v. Brooks*, 39 Ark. 403. It would seem clear that the power of Congress under "the commerce clause" extends to potential agencies of interstate commerce, regardless of their actual usage, and to the preservation of natural highways for the public. Accordingly the principal case seems correct despite the contrary decision reached by the Illinois Supreme Court in regard to the identical situation. See *People v. Economy Power Co.*, 241 Ill. 290, 89 N. E. 760.

WILLS — REPUBLICATION — INCORPORATION BY REFERENCE — VALID CODICIL REFERRING TO WILL PROCURED BY UNDUE INFLUENCE. — The testator made a holographic will and some years later a holographic codicil referring to his will. The jury found that the will was procured by undue influence but that the codicil was valid and not so procured. *Held*, that both